

HOUSE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1923

AN ACT

2 To amend chapter 197, RSMo, by adding thereto
3 eleven new sections relating to nurse
4 staffing plans.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
6 AS FOLLOWS:

7 Section A. Chapter 197, RSMo, is amended by adding thereto
8 eleven new sections, to be known as sections 197.650, 197.653,
9 197.656, 197.659, 197.662, 197.665, 197.668, 197.671, 197.674,
10 197.677, and 197.680, to read as follows:

11 197.650. 1. As used in sections 197.650 to 197.680, the
12 following terms mean:

13 (1) "Acuity system", a reliable and valid measurement
14 system that:

15 (a) Predicts nursing care requirements for individual
16 patients based on severity of patient illness, need for
17 specialized equipment and technology, and intensity of nursing
18 interventions required;

19 (b) Determines the amount of nursing care needed, both in
20 number and skill mix of nursing staff required on a daily basis

1 for each patient in a nursing unit; and

2 (c) Is stated in terms that readily can be used and
3 understood by direct care nursing staff;

4 (2) "Assessment tool", a measurement system that compares
5 the staffing level in each nursing department or unit as
6 determined by the acuity system against actual patient nursing
7 care requirements to assess the accuracy of the acuity system;

8 (3) "Department", the department of health and senior
9 services;

10 (4) "Direct care nursing staff", any nurse who has direct
11 responsibility to oversee or carry out nursing care and treatment
12 for one or more patients;

13 (5) "Director of nursing services", the person designated
14 by a hospital as having overall management responsibility for
15 nursing services;

16 (6) "Hospital", the same meaning as such term is given in
17 section 197.020;

18 (7) "Nurse", a registered professional nurse or licensed
19 practical nurse as defined in section 335.016, RSMo;

20 (8) "Public governmental body", the same meaning as such
21 term is given in section 610.010, RSMo;

22 (9) "Retaliatory action", the discipline, discharge,
23 suspension, demotion, harassment, denial of employment or
24 promotion, layoff, or any other adverse action taken against a

nurse as a result of a nurse taking any action described in sections 197.650 to 197.680;

(10) "Skill mix", refers to the differences in licensing, areas of specialization, education, training, and experience among direct care nursing staff;

(11) "Staffing plan", a hospital's written plan for meeting the expected nursing care requirements of its patients as described in subsection 4 of section 197.653;

(12) "Unforeseeable emergent circumstance", an unpredictable or unavoidable occurrence of nature or catastrophic event which could not have been prevented by the exercise of any reasonable foresight or precaution and which has an immediate adverse impact on a hospital's staffing requirements;

(13) "Unit", a functional division or area of a hospital in which nursing care is provided.

197.653. 1. Every hospital shall ensure that it is staffed at all times with sufficient numbers and skill mix of appropriately qualified direct care nursing staff in each unit within the hospital to meet the individualized care needs of the patients in such unit and to meet the requirements set forth in this section.

2. By July 1, 2003, every hospital licensed in this state shall develop, implement, and annually submit to the department a written hospital-wide staffing plan for nursing services together

1 with a written certification from its chief executive officer and
2 director of nursing services that the staffing plan is expected
3 to provide sufficient numbers and skill mix of appropriately
4 qualified direct care nursing staff to meet the anticipated needs
5 of its patients for the ensuing year. Every hospital shall have
6 a process that ensures the consideration of input from
7 nonsupervisory direct care nursing staff from each unit, within
8 the hospital or, when the direct care nursing staff is
9 represented by a recognized or certified collective bargaining
10 representative, input shall be from such collective bargaining
11 representative, in the development, implementation, monitoring,
12 evaluation, and modification of the staffing plan. The staffing
13 plan shall include the number, skill mix, qualifications, and
14 categories of direct care nursing staff needed for each unit of
15 the hospital.

16 3. As a part of a hospital's quality assurance and quality
17 improvement process, the hospital shall, in consultation with its
18 nonsupervisory direct care nursing staff, periodically evaluate
19 and monitor the staffing plan for effectiveness and revise the
20 plan as necessary. Each hospital shall maintain written
21 documentation of such quality assurance and quality improvement
22 activities and upon request, shall provide such documentation to
23 the department. All revisions to a hospital's staffing plan
24 shall be submitted to the department within ten days of

1 completion.

2 4. A hospital's staffing plan shall:

3 (1) Be based on the expected nursing care required by the
4 aggregate and individual needs of each patient. The expected
5 aggregate and individual nursing care needs of each patient shall
6 be the major consideration in determining the number and skill
7 mix of direct care nursing staff needed;

8 (2) Employ an acuity system for addressing daily
9 fluctuations in aggregate and individual patient nursing care
10 requirements necessitating adjustments in the staffing plan to
11 ensure that the nursing care needs of each patient is met;

12 (3) Be based on the specialized qualifications, skill mix,
13 experience, and competencies of the hospital's direct care
14 nursing staff;

15 (4) Be consistent with the scopes of practice for
16 registered nurses and licensed practical nurses as provided by
17 law;

18 (5) Factor in other nonpatient care duties, administrative
19 and support tasks, including arrangements for discharge,
20 transfer, and admission of patients, that are to be provided by
21 direct care nursing staff;

22 (6) Incorporate an assessment tool;

23 (7) Provide for documentation of the actual staffing and
24 patient acuity levels on a daily basis within each unit of the

1 hospital; and

2 (8) Identify the minimum number of direct care nursing
3 staff, including both registered nurses and licensed practical
4 nurses, required on specific shifts. The actual number of direct
5 care nursing staff on duty for each shift shall be sufficient to
6 ensure that the nursing care needs of each patient are met. At
7 least one registered nurse providing direct patient care services
8 must be on duty in each unit where a patient is present,
9 excluding long-term care units.

10 5. The skill mix reflected in the staffing plan shall
11 assure that each of the following elements of the nursing process
12 are performed by registered nurses in the planning and delivery
13 of care for each patient: assessment, nursing, diagnosis,
14 planning, evaluation, and patient advocacy. The skill mix shall
15 not incorporate or provide that nursing care functions required
16 by law, regulation, or accepted standards of practice to be
17 performed by a registered nurse or licensed practical nurse are
18 to be performed by unlicensed assistive personnel.

19 6. Every hospital shall maintain and post a voluntary on-
20 call list of qualified on-call nurses, nursing services, nurse
21 registries, and per diem nurses that may be called upon to
22 provide replacement staff in the event of sickness, vacations,
23 vacancies, and other absences of direct care nursing staff. The
24 on-call list shall include a sufficient number and skill mix of

1 on-call nurses to meet the regular needs of the hospital for
2 replacement staff.

3 7. Upon written request of a hospital and for good cause
4 based on actual patient care needs or the nursing practices of
5 the hospital, the department of health and senior services may
6 grant variances to a hospital's staffing plan on a limited basis.
7 If a hospital is unable to meet its staffing plan on a particular
8 shift, the hospital shall report to the department by phone or
9 electronically prior to the start of the shift the reason for the
10 staffing shortage and the individual who made the determination
11 of such staffing shortage.

12 197.656. 1. Unless the department has granted a written
13 variance or the hospital has notified the department pursuant to
14 section 197.653, a hospital shall at all times provide direct
15 care nursing staff in accordance with its staffing plan and the
16 staffing standards set forth in sections 197.650 to 197.680;
17 provided that nothing herein shall be deemed to preclude a
18 hospital from implementing higher direct care nurse-to-patient
19 staffing levels.

20 2. No nurse shall be assigned to or included in the count
21 of direct care nursing staff in a unit of a hospital for purposes
22 of compliance with the staffing plan without appropriate
23 licensing, training, orientation, and verification that the nurse
24 is capable of providing competent nursing care to the patients in

1 the unit.

2 3. No nurse assigned to or performing nonpatient care
3 duties, administrative or support tasks and who provides direct
4 patient care for less than seventy-five percent of the time on
5 that shift shall be included in the count of direct care nursing
6 staff in a unit of a hospital for purposes of compliance with the
7 staffing plan.

8 197.659. 1. Immediately upon learning that staffing on any
9 shift will fall below the minimum number of direct care nursing
10 staff required for that shift by the hospital's staffing plan and
11 prior to requiring any direct care nursing staff or unlicensed
12 assistive personnel to work overtime, the hospital shall first
13 attempt to fill its staffing needs through other means, including
14 requesting off-duty staff to voluntarily report to work and
15 requesting on-duty staff to volunteer for overtime hours and
16 using the hospital's on-call list. Each replacement direct care
17 nursing staff shall have a skill mix appropriate to the unit to
18 which assigned.

19 2. Except as provided in subsections 4 and 5 of this
20 section and in subsection 1 of section 197.662, a hospital shall
21 not mandate or otherwise require a nurse to work in excess of any
22 of the following:

23 (1) The nurse's regularly scheduled shift or duty period;

24 (2) More than twelve hours in a twenty-four hour time

1 period;

2 (3) Eighty hours in a fourteen consecutive-day period.

3 As used in this subsection and section 197.662, "mandate" or
4 "mandatory" means any request which if refused or declined by the
5 nurse may result in retaliatory action against the nurse.

6 Nothing in this subsection shall prohibit a nurse from
7 voluntarily working in excess of the provisions of this
8 subsection.

9 3. Except as provided in subsection 2 of section 197.662, a
10 hospital shall not authorize or permit a nurse to perform patient
11 care services for more than sixteen hours in a twenty-four hour
12 period. Any nurse performing patient care services for sixteen
13 hours in any twenty-four hour period must have at least eight
14 consecutive hours off duty before being authorized or permitted
15 to return to patient care duties. No nurse shall be authorized
16 or permitted to provide patient care for more than seven
17 consecutive days without at least one consecutive twenty-four
18 hour period off duty within such time. A work schedule or on-
19 call program established pursuant to a mutually agreed upon
20 employment agreement may provide for additional hours as a result
21 of being on-call, provided adequate measures are included in the
22 agreement to ensure against fatigue.

23 4. The provisions of subsection 2 of this section shall not

1 apply if a hospital has made every reasonable effort to contact
2 all of the nurses and nursing services on the on-call list
3 described in section 197.653 and is unable to obtain appropriate
4 replacement direct care nursing staff with appropriate skill mix
5 in a timely manner. The hospital shall document its effort
6 pursuant to this section to obtain replacement direct care
7 nursing staff.

8 5. Direct care nursing staff shall not place a patient at
9 risk of harm by abandoning a patient care assignment during a
10 shift or an extended shift without authorization from the
11 appropriate supervisory personnel.

12 197.662. 1. During a declared national or state emergency
13 or unforeseeable emergent circumstance in which a hospital has a
14 direct role in responding to medical needs resulting from the
15 declared emergency or unforeseeable emergent circumstance, the
16 mandatory overtime prohibition in subsection 2 of section 197.659
17 shall not apply to the following extent:

18 (1) Direct care nursing staff and unlicensed assistive
19 personnel may be required to work or be on duty up to the maximum
20 hour limitations set forth in subsection 3 of section 197.659
21 provided the hospital has taken the steps set forth in subsection
22 4 of section 197.659 and made reasonable efforts to fill its
23 immediate staffing needs through alternative efforts, including
24 requesting off-duty nurses to voluntarily report to work and

1 requesting on-duty nurses to volunteer for overtime hours; and

2 (2) The exemption to the provisions of subsection 2 of
3 section 197.659 granted by this section shall not exceed the
4 duration of the declared national or state emergency or
5 unforseeable emergent circumstance and the hospital's direct role
6 in responding to medical needs resulting from the declared state
7 of emergency or unforeseeable emergent circumstance.

8 2. During a declared national or state emergency or
9 unforseeable emergent circumstance in which a hospital has a
10 direct role in responding to medical needs resulting from the
11 declared emergency or unforeseeable emergent circumstance, the
12 maximum hours limitation set forth in subsection 3 of section
13 197.659 shall not apply if:

14 (1) The decision to work the additional time is voluntarily
15 made by the affected nurse;

16 (2) The nurse is given at least one uninterrupted four-hour
17 rest period before returning to patient care duties following the
18 completion of a sixteen hour shift and an uninterrupted eight-
19 hour rest period before returning to patient care duties
20 following the completion of a twenty-four hour shift;

21 (3) Any nurse who has been on duty for more than sixteen
22 hours in a twenty-four hour period who informs appropriate
23 supervisory personnel that he or she needs immediate rest shall
24 be relieved from duty as soon thereafter as possible consistent

1 with patient safety needs and given at least eight uninterrupted
2 hours off duty before being required to return to duty;

3 (4) The exemption to the provisions of subsection 2 of
4 section 197.659 granted by this subsection shall not exceed the
5 duration of the declared national or state emergency or
6 unforseeable emergent circumstance and the hospital's direct role
7 in responding to medical needs resulting from the declared state
8 of emergency or unforeseeable emergent circumstance.

9 As used in this subsection, "rest period" means a period in which
10 an individual may be required to remain on the premises of the
11 hospital but is free of all restraint, duty, or responsibility
12 for work.

13 197.665. 1. Every licensed hospital shall adopt and
14 disseminate to direct care nursing staff a written policy that
15 complies with the requirements of subsections 2 and 3 of this
16 section detailing the circumstances under which a direct care
17 nursing staff may refuse a work assignment or continued duty.

18 2. At a minimum, the work assignment policy shall permit a
19 direct care nurse to refuse an assignment or continued duty in
20 the following circumstances:

21 (1) The nurse is not prepared by licensure, education,
22 training, experience, or unit orientation to fulfill the
23 assignment without compromising or jeopardizing patient safety or

1 the nurse's ability to meet foreseeable patient needs;

2 (2) The nurse has volunteered to work in excess of the
3 provisions of subsection 2 of section 197.659 but subsequently
4 determines that his or her level of fatigue or decreased
5 alertness may compromise or jeopardize patient safety or the
6 nurse's ability to meet foreseeable patient needs;

7 (3) The assignment otherwise violates the requirements of
8 sections 197.650 to 197.680.

9 3. At a minimum, the work assignment policy shall contain
10 procedures for the following:

11 (1) Reasonable requirements for notice to the director of
12 nursing services, or the director's designee, regarding the
13 nurse's refusal of a work assignment or continued duty and
14 supporting reasons for refusing the assignment or continued duty;
15 and

16 (2) When time permits, an opportunity for the director of
17 nursing services to review the specific reasons supporting the
18 nurse's refusal, and to decide whether to remedy the conditions
19 giving rise to the refusal, to relieve the nurse of the
20 assignment or continued duty, or to reject the nurse's reasons
21 for refusal of the assignment or continued duty; and

22 (3) Permits the nurse to refuse the assignment or continued
23 duty without retaliatory action when the director of nursing
24 services rejects the nurse's reasons for refusal of the

1 assignment or continued duty and:

2 (a) The nurse reasonably believes that the assignment or
3 continued duty meets the conditions of this section and the
4 hospital policy justifying refusal of the assignment or continued
5 duty; and

6 (b) The director of nursing services fails to propose a
7 remedy or the nurse reasonably believes the proposed remedy will
8 be inadequate or untimely; and

9 (c) Complaint and investigation process with the
10 appropriate regulatory agency will be untimely to address the
11 concern.

12 197.668. 1. The department shall establish a toll-free
13 telephone number for receipt of confidential information on a
14 hospital's failure to comply with sections 197.650 to 197.680.

15 2. Upon receipt of information that a hospital failed to
16 comply or is deficient in meeting the requirements of sections
17 197.650 to 197.680, the department shall conduct an investigation
18 and, if the noncompliance or deficiency is substantiated, the
19 department shall notify the hospital of the noncompliance or
20 deficiency and provide the hospital with an opportunity to
21 develop and implement a plan of correction. If the plan of
22 correction proposed by the hospital is not acceptable to the
23 department, the department may require the hospital to implement
24 a plan of correction developed by the department.

1 3. If there is a continuing noncompliance or deficiency
2 after the implementation of the plan of correction, the
3 department may restrict or suspend new patient admissions or
4 outpatient services in all units of the hospital affected by the
5 noncompliance or deficiency.

6 4. If the noncompliance or deficiency continues after new
7 patient admissions or outpatient services have been restricted or
8 suspended pursuant to subsection 3 of this section, the
9 department may deny, suspend, or revoke the hospital's license
10 pursuant to section 197.070.

11 5. A hospital aggrieved by a decision of the department
12 requiring the hospital to implement a plan of correction
13 developed by the department pursuant to subsection 2 of this
14 section, or to restrict or suspend new patient admissions or
15 outpatient services pursuant to subsection 3 of this section may
16 appeal such decision to the administrative hearing commission
17 pursuant to section 197.071 and seek judicial review pursuant to
18 section 621.145, RSMo. Any such appeal shall be heard on an
19 expedited basis by the administrative hearing commission. The
20 hospital may apply to the administrative hearing commission for
21 an order to stay or suspend the department's action pending the
22 commission's decision on the appeal.

23 6. The department shall conduct an annual unannounced audit
24 of not less than seven percent of all hospitals in this state to

1 verify compliance with the requirements of sections 197.650 to
2 197.680. Surveys made by private accrediting organizations shall
3 not be used in lieu of the audit required by this subsection.
4 The department shall compile and maintain for public inspection
5 an annual report of the audits conducted pursuant to this
6 subsection. If the audit reveals noncompliance with sections
7 197.650 to 197.680, the department shall notify the hospital of
8 the noncompliance or deficiency and shall ensure that the
9 noncompliance or deficiency is corrected following the procedures
10 established in subsections 2 to 5 of this section.

11 7. All findings of the department of deficiency or
12 noncompliance with sections 197.650 to 197.680 and all plans of
13 correction for such noncompliance or deficiency shall be subject
14 to public disclosure consistent with section 197.477.

15 197.671. 1. No hospital shall take retaliatory action
16 against a nurse because the nurse:

17 (1) Discloses or intends to disclose to the director of
18 nursing services or the director's designee, a private
19 accreditation organization, the nurse's collective bargaining
20 agent, or a public governmental body any activity, policy, or
21 practice of the hospital or a hospital that is in violation of
22 sections 197.650 to 197.680, or any other law, rule, or
23 professional standard of practice and which the nurse reasonably
24 believes poses a risk to the health, safety, or welfare of a

1 patient or the public;

2 (2) Provides information to or testifies before a private
3 accreditation organization or public governmental body conducting
4 an investigation, hearing, or inquiry into an alleged violation
5 by a hospital of any law, rule, or professional standard of
6 practice that the nurse reasonably believes poses a risk to the
7 health, safety, or welfare of a patient or the public;

8 (3) Objects to or refuses to participate in any activity,
9 policy, or practice of a hospital that is in violation of
10 sections 197.650 to 197.680, or any law, rule, or professional
11 standard of practice that the nurse reasonably believes poses a
12 risk to the health, safety, or welfare of a patient or the
13 public;

14 (4) Participates in a committee or peer review process or
15 files a report or complaint that discusses allegations of unsafe,
16 dangerous, or potentially dangerous care within the hospital.

17 2. Except as provided in subsection 3 of this section, the
18 protection against retaliatory action in subsection 1 of this
19 section does not apply to a nurse unless before making a
20 disclosure to a private accreditation organization or public
21 governmental body the nurse:

22 (1) Gives written notice to the director of nursing
23 services, or the director's designee, of the activity, policy, or
24 practice that the nurse believes is in violation of sections

1 197.650 to 197.680, or any other law, rule, or professional
2 standard of practice and which the nurse reasonably believes
3 poses a risk to health, safety, or welfare of a patient or the
4 public; and

5 (2) Provides the director of nursing services with a
6 reasonable opportunity to correct the activity, policy, practice,
7 or violation.

8 3. A nurse is not required to comply with the provisions of
9 subsection 2 of this section to obtain the protection in
10 subsection 1 of this section against retaliatory action if the
11 nurse:

12 (1) Reasonably believes that the activity, policy,
13 practice, or violation is known to the director of nursing
14 services, or the director's designee, and the nurse reasonably
15 believes that the delay in compliance with subsection 2 of this
16 section jeopardizes the life or health of any person;

17 (2) Reasonably fears physical or other harm to a patient as
18 a result of the disclosure; or

19 (3) Makes the disclosure to a private accreditation
20 organization or public body for the purpose of providing evidence
21 of an activity, policy, practice, or violation by the hospital
22 that the nurse reasonably believes is a crime.

23 197.674. 1. A nurse aggrieved by a retaliatory act
24 prohibited by sections 197.650 to 197.680 may bring an action

1 against the hospital in the circuit court of the county in which
2 the hospital is located. If the nurse prevails in such action,
3 the nurse may recover actual and punitive damages, attorney's
4 fees, court costs, and expenses. In addition, the court may:

5 (1) Issue a temporary restraining order, or a preliminary
6 or permanent injunction to restrain a continued violation of
7 sections 197.650 to 197.680;

8 (2) Reinstate the nursing staff to the same or equivalent
9 position that the nurse held before the retaliatory action;

10 (3) Reinstate full benefits and seniority rights to the
11 nurse as if the nurse had continued in employment; or

12 (4) Order expungement of the all retaliatory action from
13 the nurse's employment records.

14 2. Except as provided in subsection 3 of this section, in
15 any action brought by a nurse pursuant to subsection 1 of this
16 section, if the court finds that the nurse had no objectively
17 reasonable basis for filing the action, the court may award court
18 costs, expert witness fees, and reasonable attorney fees to the
19 hospital.

20 3. A nurse shall not be assessed costs or fees pursuant to
21 subsection 2 of this section if, after filing the action, the
22 nurse exercises reasonable and diligent efforts to ascertain the
23 facts and upon finding no objectively reasonable basis for
24 continuing such action, dismisses the action against the

1 hospital.

2 197.677. 1. A hospital shall provide written notice to all
3 direct care nursing staff summarizing the provisions of sections
4 197.650 to 197.680 at the time a direct care nursing staff is
5 first employed by the hospital and annually thereafter. In
6 addition:

7 (1) Each hospital shall post in a conspicuous place readily
8 accessible to the general public a notice prepared by the
9 department setting forth in summary form the provisions of
10 sections 197.650 to 197.680;

11 (2) Upon request, the hospital shall provide the current
12 staffing levels described in the hospital's staffing plan and the
13 hospital's actual staffing levels in each nursing unit;

14 (3) Upon request, the hospital shall make copies of its
15 staffing plan as filed with the department available to the
16 public; and

17 (4) Every hospital shall post or make available within each
18 nursing unit, the following information:

19 (a) A copy of the current staffing plan for the unit;

20 (b) The documentation of actual staffing and patient acuity
21 on a daily basis as provided in subdivision (7) of subsection 4
22 of section 197.653; and

23 (c) Identification of the minimum number of direct care
24 nursing staff required on each shift as provided in subdivision

1 (8) of subsection 4 of section 197.653.

2 2. Any hospital that intentionally violates the provisions
3 of this section is subject to a civil penalty not to exceed five
4 hundred dollars for each violation.

5 3. Any hospital that violates the staffing requirements of
6 sections 197.650 to 197.680, and such violation is directly and
7 substantially related to or results in, but does not have to be
8 the sole cause of, serious physical harm to or the death of a
9 patient, shall be subject to a civil penalty of one hundred
10 thousand dollars for each such violation.

11 197.680. 1. Nothing in section 197.674 shall diminish any
12 rights, privileges, or remedies of a nurse under federal law or
13 regulation, or under any collective bargaining agreement or
14 employment contract.

15 2. Section 197.674 provides the only remedies under state
16 law for an alleged violation of section 197.671 committed by a
17 hospital.